



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

OCT - 9 2007

Dani Jahn, Esq.  
Federal Public Defender – Washington, D.C.  
Assistant Federal Public Defender  
625 Indiana Avenue NW, Suite 550  
Washington, D.C. 20004

RE: MUR 5814  
Jack Thomas

Dear Ms. Jahn:

On October 4, 2007, the Federal Election Commission accepted the signed conciliation agreement submitted on your client's behalf in settlement of violations of U.S.C. §§ 432(b)(3) and 439a(b), provisions of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter as it pertains to Jack Thomas.

The Commission reminds you that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) still apply, and that this matter is still open with respect to other respondents. The Commission will notify you when the entire file has been closed.

Enclosed you will find a copy of the fully executed conciliation agreement for your files. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

*Marianne Abely*  
Marianne Abely  
Attorney

Enclosure  
Conciliation Agreement

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**FEDERAL ELECTION COMMISSION**

In the Matter of

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MUR 5814

Jack Thomas

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FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

**CONCILIATION AGREEMENT**

This matter was initiated by the Federal Election Commission ("the Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2). Based upon available information, the Commission found reason to believe that Jack Thomas ("Respondent") knowingly and willingly violated 2 U.S.C. §§ 432(b)(3) and 439a(b).

NOW, THEREFORE, the Commission and Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

- I. The Commission has jurisdiction over Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).
- II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.
- III. Respondent enters voluntarily into this agreement with the Commission.
- IV. The pertinent facts in this matter are as follows:

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1. Lamutt for Congress ("Committee") is a political committee within the meaning of 2 U.S.C. § 431(4) and was Robert Bruce Lamutt's principal campaign committee for the 2004 election cycle. Lamutt was the Committee's treasurer during the relevant time period.

2. At all relevant times, Respondent served in the capacity of campaign manager for the Lamutt Committee.

3. The Act prohibits commingling committee funds with "the personal funds of any individual," 2 U.S.C. § 432(b)(3), including the personal funds of officers of a committee. *See* 11 C.F.R. § 102.15

4. The Act prohibits an individual from converting contributions or donations to federal candidates for the individual's personal use. 2 U.S.C. § 439a(b)(1). This provision prohibits "any person" from using campaign funds for personal use. *Id.*; *see also* 2 U.S.C. § 431(11) (defining "person" under the Act). The Act sets forth examples of *per se* instances of improper personal use, such as using campaign contributions or donations for mortgage or rental payments, clothing expenses, or household food items. *See* 2 U.S.C. §§ 439a(b)(2)(A)-(I); *see also* 11 C.F.R. § 113.1(g). In addition, the Act considers a contribution or donation improperly converted for personal use if "the contribution or amount is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective" of the campaign. 2 U.S.C. § 439a(b)(2).

5. The phrase knowing and willful indicates that "actions [were] taken with full knowledge of all of the facts and a recognition that the action is prohibited by law." 122 Cong. Rec. H 2778 (daily ed. May 3, 1976); *see also Federal Election Comm'n v. John A. Dramesi for Cong. Comm.*, 640 F. Supp. 985, 987 (D.N.J. 1986) (distinguishing between "knowing" and "knowing and willful"). A knowing and willful violation may be established "by

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proof that the defendant acted deliberately and with knowledge" that an action was unlawful.

*United States v. Hopkins*, 916 F.2d 207, 214 (5<sup>th</sup> Cir. 1990).

6. From July 19, 2003, through February 1, 2004, Respondent served as the Committee's campaign manager. In that position, Respondent supervised the day-to-day operation of the campaign and its employees and volunteers. Until a communications director was hired in early December 2003, Respondent handled media relations for the Committee. Respondent also had access to the Committee's Quicken files, which contained all the Committee's financial information, including its receipts and disbursements. Respondent tracked the Committee's disbursements and participated in the preparation of the Committee's disclosure reports. Respondent was the person responsible for filing the Committee's disclosure reports with the Commission.

7. In the fall of 2003, Respondent gained access the Committee's check book. Respondent soon controlled the Committee's check book and locked it in a cabinet in his campaign office. Respondent received the Committee's bank statements, which he was responsible for making available to the candidate and other campaign staff. On or about December 2003, Respondent became a signatory on the Committee's bank account. He was one of three persons who were authorized to write checks on the Committee's bank account. Respondent was authorized to sign and issue checks for nominal amounts, including checks at or below a few hundred dollars. For disbursements above a few hundred dollars Respondent was required to obtain authorization from the candidate.

8. The Committee instituted certain internal procedures designed to restrict staff access to campaign funds. For example, while authorized staffers were permitted to incur nominal campaign related expenditures, all expenditures over a nominal amount required the

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candidate's approval. Checks for more than \$1,000 drawn on the Committee's bank account required two signatures, one of which had to be the candidate's. Additionally, the campaign's staff was prohibited from obtaining a bank debit card on the Committee's bank account.

9. Notwithstanding these procedures, Respondent embezzled \$34,855 from the Committee's bank account between September 2003 and February 2004 by issuing unauthorized checks to himself, his wife, Nancy Trott and his brother-in-law, Rick Gant. Respondent forged signatures on most of these unauthorized checks, including the signature of the candidate. Also, in direct contravention of the Committee's internal procedures, Respondent had a debit bank card issued in the Committee's name and used the card to make \$6,072.96 worth of unauthorized purchases. Neither the candidate nor the campaign authorized the payments to Respondent, Trott and Gant or the purchases made with the bank debit card.

10. Committee staff discovered Respondent's embezzlement of Committee funds on or about February 1, 2004. On January 24, 2006, Respondent pled guilty to one count of Mail Fraud, pursuant to 18 U.S.C. § 1341. On November 6, 2006, Respondent was sentenced in United States District Court for the District of Columbia to 4 years probation and ordered to pay restitution in the amount of \$40,927.96 to the Committee. Respondent is currently paying restitution to the Committee at a rate of \$200 per month.

V. Respondent knowingly and willingly violated 2 U.S.C. § 432(b)(3) by commingling Committee funds with personal funds and knowingly and willingly violated 2 U.S.C. § 439a(b) by converting campaign funds for his personal use.

VI. Respondent will take the following actions:

1. Respondent will cease and desist from violating 2 U.S.C. §§ 432(b)(3) and 439a(b).

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2. Respondent is prohibited from working or volunteering in federal political campaigns in any capacity involving the political committee's finances for a period of 5 years from the date of this Agreement.

VII. Respondent, Jack Thomas, through the submission of extensive financial documentation to the Commission and additional representations, has indicated that financial hardship prevents him from paying any civil penalty to the Commission. The Commission regards these submissions and representations as material representations. Due to the mitigating circumstances presented by Respondent's financial condition, the Commission agrees to depart substantially from the civil penalty that the Commission would normally seek for the violations at issue, and the Commission agrees that no civil penalty shall be due. If evidence is uncovered indicating Respondent's financial condition is not as stated, a civil penalty of eighty thousand dollars (\$80,000) shall be immediately due, pursuant to 2 U.S.C. § 437g(a)(5)(B).

VIII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

IX. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

X. Respondent shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirement contained in this agreement and to so notify the Commission.

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X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Thomaseenia P. Duncan  
General Counsel

BY:



Ann Marie Terzaken  
Acting Associate General Counsel  
for Enforcement

Date

10/5/07

FOR THE RESPONDENT



(Name) JACK THOMAS  
(Position)

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